Krishna Prasad and Others

Vs

Gauri Kumari Devi

Civil Appeal No. 352 of 1959

(P. B. Gajendragadkar, A. K. Sarkar, K. N. Wanchoo JJ)

05.03.1962

JUDGMENT

GAJENDRAGADKAR, J. –

This appeal has been brought to this Court with a certificate issued by the Patna High Court and it raises as short question about the scope and effect of the provisions of section 4(d) of the Bihar Land Reform Act, 1950 (30 of 1950) (hereinafter called the Act). The respondent Smt. Gauri Kumari Devi along with her husband, Babu Shyamakant Lal, executed a registered anomalous mortgage in favour of the appellants Babu Krishna Prasad and his three sons on the 10th of July, 1937, for a sum of Rs. 35,000/-. The document evidenced a combination of 'Sudharna' as well as simple mortgage and the period specified in it was five years. The respondent was the principal mortgagor and by the mortgage deed she mortgaged 10 annas and 8 pies Hakiat Milkiat of village Sonchari Mouza No. 11912 in the district of Patna which was the Zamindari property and 16.41 acres of khudkasht land appertaining to khata No. 3 of the said Mouza.

The appellants sued on this mortgage to recover Rs. 69,816/5/17 in the court of the Sub-Judge at Patna. The said suit ended in a decree in favour of the appellants on the 26th August, 1946. The trial Judge ordered that for the satisfaction of the decretal amount, "the mortgage properties would be charged preliminary and if the decretal amount is not fully satisfied from them, then alone the respondent would be personally liable for the satisfaction of the balance, if any." That is how a composite decree came to be passed in the suit. By the final decree which followed on the 30th September, 1947, the respondent's liability to pay Rs. 52,950/3/- was determined.

The appellants then filed an Execution Case No. 6 of 1952 and claimed that the decretal amount should be realised by sale of the mortgaged Zamindari properties. The respondent raised an objection against the appellants' claim on the ground that the mortgaged properties had in the meanwhile vested in the State of Bihar under the provisions of the Act and so, they were not liable to sale in execution proceedings as the respondent had ceased to have any interest in them. Ultimately, the Execution Case filed by the appellants was dismissed on the 9th January, 1954,

When the respondent contested the Execution Case on the ground that the mortgaged properties had vested in the State of Bihar, the appellants applied for transfer of their decree for the execution to the Gaya Court. They intimated to the Court that they wanted to execute the decree against the respondent by proceeding against her properties other than those which were the subject-matter of the mortgage and they alleged that they were entitled so to do by reason of the personal decree which had been passed against her. The application made by the appellants for the transfer of decree was granted and the decree was transferred on the 22nd of January, 1954 with a certificate of non-

satisfaction.

The appellants then filed Execution Case No. 19 of 1954 in the Court of the Subordinate Judge at Gaya and sought to recover the decretal amount by attachment and sale of other properties belonging to the respondent. In these proceedings, the respondent filed an objection under section 47 of Code and it was numbered as Misc. Case No. 96 of 1954. She urged that the appellants had not obtained a personal decree against her and so, the claim made by them in their Execution Case was not maintainable. She also contended that the appellants could not proceed against her other properties because their remedy was to follow the compensation money which would be given by the State of Bihar to her in lieu of her properties which had vested in the said State.

It appears that in the 23rd December, 1954, the Misc. Case No. 96 of 1954 filed by the respondent was allowed ex-parte by the Sub-Judge at Gaya and, in consequence, the Execution Case No. 19 of 1954 filed by the appellants was dismissed. The appellants then applied for review of the said order and prayed that their Execution Case should be restored to file and should be dealt with in accordance with law. On the 20th April, 1955, the Executing Court allowed the appellants' application for review and held that the appellants had obtained a personal decree against the respondent and that they had a right to sell the other properties of the respondent in execution of the said personal decree. That is how the Executing court directed that execution should proceed as prayed for by the appellants.

The respondent challenged this order by preferring a Civil Revision Application before the Patna High court and it was numbered as 590 of 1955. The High Court held that a personal decree had been passed in favour of the appellants, though that part of the direction given in the judgment had not been formally incorporated in the decree. The High Court therefore, rejected the respondent's contention that no personal decree had been passed since an application had not been made by the appellants under Order 34 Rule 6 of the C.P.C. The High Court also rejected the respondent's argument that a Review Application did not lie against the first order passed by the Executing Court, though it thought that there was some substance in the contention raised by the respondent that, on the merits, the review need not have been granted. Even so, the High Court did not choose to base its decision on this contention. It has allowed the Revision Application on the merits because it has held that the appellants have no right to execute the personal decree by proceeding to sell the other properties of the respondent, for section 4(d) of the Act constituted a bar against such proceedings. On this view, the High Court allowed the Revision Application, set aside the order passed by the Executing Court in favour of the appellants and has ordered that the Execution Application filed by the appellants should be dismissed. The appellants then applied for and obtained a certificate from the High Court and it is with the said certificate that they have came to this Court; and so, the point which falls to be decided is in regard to the scope and effect of section 4(d) of the Act. We ought to add that the respondent's objection against the competence of the appellants' application for review has not been pressed before us.

Before dealing with the said point, it would be convenient to state some material facts. The first material fact is that all the properties mortgaged by the respondent in favour of the appellants constitute an estate under section 2(1) of the Act, so that we are dealing with a case where the entire mortgaged property belonging to the mortgagor proprietor property belonging to the mortgagor proprietor has vested in the Sate of Bihar. It is not a case where part of the properties mortgaged has vested in the State while some of them continue to be vested in the mortgagor.

The second point which has to be borne in mind in dealing with the present controversy is that the

appellants seek to execute the personal decree against the respondent. There is no doubt that under O. 34 R. 6 of the Code, a personal decree can be passed on an application made by the mortgagee decree-holder only where the net proceeds of any sale held under O. 34 R. 5 are found to be insufficient to pay the amount due to the decree-holder, that is to say, it is only after the mortgagee decree-holder has exhausted his remedy against the mortgaged property that he is entitled to apply to recover the balance from the mortgagor judgment-debtor personally otherwise than out of the properties mortgaged. It may be that in the case of a composite decree, an application as contemplated by O. 34. R. 6, may not be necessary; but in that connection, it may be relevant to bear in mind that under the normal procedure prescribed by O. 34 R. 6, recovery of the balance due under a mortgage decree is ordered on an application by the mortgagee decree-holder where it is shown that the net proceeds of any sale held under the mortgage decree are insufficient to pay the amount due under the decree. Besides, the order passed by the trial Court in its judgment which has been treated in substance to constitute a personal decree in the present proceedings, makes the position quite clear. The learned Judge directed that for the satisfaction of the decretal amount, the mortgaged properties would be charged preliminary and he added that if the decretal amount is not fully satisfied from them, then the appellants would be entitled to proceed against the respondent personally. In other words, the decree clearly and unambiguously provides that the appellants would be justified in executing the personal decree against the respondent only if and after they have exhausted their remedy against the mortgaged properties and have not been able to recover the whole of the decretal amount by that process. That is the second material fact which has to be borne in mind.

Then the third fact to which reference must be made is that after the prescribed notification was issued and the mortgaged properties belonging to the respondent had vested in the State of Bihar, the appellants applied under section 14 of the Act notifying their claim under the mortgage decree to the Claims Officer, and, in fact, on the 24th November, 1956, the Claims Officer has determined that a sum of Rs. 58,100/- plus future interest at 4% per annum over the principal amount only but limited to the total interest not exceeding the amount of the principal, would be payable to the appellants out of the compensation amount payable to the respondent in respect of the properties mortgaged. This fact was not known to the respondent at the time when her Revision Application was argued before the High court, because it appears that the respondent did not appear in the proceedings before the Claims Officer. The said fact has, however, been stated before us by the respondent on an affidavit and its correctness is not disputed by the appellants. It is in the light of these facts that we have to decide whether the High court was right in holding that the appellants' application for execution at the present stage in incompetent in view of the provisions of section 4(d) of the Act.

Let us then briefly refer to the relevant provisions of the Act which would enable us to construe section 4(d) and determine its scope and effect. As is well-known, the Act was passed to provide for the transference to the State of the interests of proprietors and tenure-holders in land and of the mortgagees and lessees of such interests and to provide for the constitution of a Land Commission for the State of Bihar with powers to advise the State Government on the agrarian policy to be pursued by the said Government consequent upon such transference and for other matters connected therewith. The object of the Act which is writ large on its provisions was to eliminate the intermediaries and establish direct relation between the State and the cultivators. This policy has subsequently been adopted in many other States in order to bring about the much needed agrarian reform. Section 2(1) defines an "estate" meaning any land included under one entry in any of the general registers of revenue-paying lands and revenue-free lands, prepared and maintained under the law for the time being in force by the Collector of a district and includes revenue-free land not

entered in any register and a share in or of an estate. It is common ground that the mortgaged properties with which we are concerned in the present appeal are an estate under section 2(i). Similarly, it is common ground that the respondent is a proprietor as defined in s. 2(o). Section 3 enables the State Government to declare from time to time by notification that the estates or tenures of a proprietor or tenure-holder, specified in the notification, have passed to and become vested in the State. The notification contemplated by s. 3(l) has been issued in respect of the estate in question. Section 4 prescribes the consequences of vesting of an estate or tenure in the State. Broadly stated, the effect of s. 4(a) is that an estate in respect of which a notification has been issued shall, with effect from the date of vesting, vest absolutely in the State free from all incumbrances and the proprietor of the said estate shall cease to have any interests in such estate, other than the interest expressly saved by or under the provisions of the Act. That takes us to section 4(d) which provides that no suit shall lie in any Civil Court for the recovery of any money due from such proprietor or tenure-holder the payment of which is secured by a mortgage of, or is a charge on, such estate or tenure and all suits and proceedings for the recovery of any such money which may be pending on the date of vesting shall be dropped. It is conceded that s. 4(d) takes in cases where decrees have been passed and that the word "proceedings" used in its latter portion covers execution proceedings. It is, however, urged that the bar created by s. 4(d) applies only to execution proceedings which are taken by mortgagees decree-holders to recover their decretal amount from estates which have vested in the State and that execution proceedings in which decree-holders seek to recover their decretal dues from properties other than those which have vested in the State are outside the mischief of s. 4(d). In other words, Mr. Jha for the appellants contends that the High Court was in error in adopting the broad and literal construction of section 4(d).

Before we deal with this argument, it would be convenient to refer to the other relevant sections of the Act. Section 14(1) prescribes the time within which a secured creditor has to file his claims. Every creditor, whose debt is secured by a mortgage of an estate, has, within the prescribed time, to notify in the prescribed manner his claim in writing to the Claims Officer appointed in that behalf. It is the function of the Claims Officer to determine the amount of debt legally and justly payable to each creditor in respect of his claim. Thus, it is clear that a mortgagee decree-holder has to apply within the specified time before the Claims Officer and that the Claims Officer would have to determine what is legally and justly due to him. Section 14(3) makes it clears that if the mortgagee decree-holder fails to notify his claim as required by s. 14(1), the said claim shall be barred, subject to the proviso which it is unnecessary to consider. The effect of section 14(3), therefore, is that if a claim of the nature referred to in sub-section (1) is not duly notified to the Claims Officer within the time and in the manner prescribed by the said sub-section, the said claim would be barred. The penalty for non-compliance with section 14(1) thus clear. Section 15 requires the creditor to furnish full particulars and documents in support of his claim. Section 16(1) lays down that the Claims Officer shall determine the principle amount justly due to each creditor and interest due at the date of such determination in respect of such principal amount, the determination to be made in accordance with the rules made under the Act. Section 16(2) prescribes a scheme for the scaling down of the debts due by the judgment-debtor. Clauses (b) and (d) of section 16(2) clearly suggest that the policy of the Act, inter alia, is to give relief to the debtors whose estates have by operation of the law vested in the State. Section 17 provides for an appeal against the decision of the Claims Officer to a Board whose constitution is prescribed by section 18(1). Section 18(3) lays down that the decision of the Board and, where no appeal has been preferred to the Board, the decision of the Claims Officer shall be final. So, the scheme of Chapter IV which consists of sections 14 to 18 clearly is that all claims based on mortgages relating to estates have to be submitted to the Claims Officer and the amounts due to the creditors have to be determined in accordance with the principles

laid down by the Act. Where the whole of the property mortgaged is an estate, there can be no doubt that the procedure prescribed by Chapter IV has to be followed in order that the amount due to the creditor should be determined by the Claims Officer. The decision of the Claims Officer or the Board had been made final by the Act.

Chapter V deals with the problem of the assessment of compensation. Section 24 provides for the rates of compensation. Section 24(5) lays down, inter alia, that in the case where the interest of a proprietor is subject to a mortgage, or charge, the compensation shall first be payable to the creditor holding such mortgage or charge and the balance, if any, shall be payable to the propritor. It adds that the amount determined under Chapter IV which, notwithstanding anything contained in any law for the time being in force, shall not in any case exceed the amount of compensation payable in respect of the estate or portion thereof which is subject to such mortgage, and where there are two or more such creditors, the compensation shall be payable to them in the order determined under the said Chapter. This provision is, in a sense, consequential and it provides for the payment of the amount already determined to be justly and legally due to the creditor and so, a claim which is made under section 14 would be determined under section 16 and the amount so determined will be paid under s. 24(5).

Chapter VI deals with the payment of compensation, and section 32 provides for the manner of its payment. Thus, the scheme of Chapters IV, V & VI is clear. The provisions in the said Chapters constitute an integrated and self-sufficient Code for the determination of the amount due to the creditors in question and for their payments, and section 35 which occurs in Chapter VIII prescribes a bar to the jurisdiction of Civil Courts in the matters included in it. Under this section, no suit shall be brought in any Civil Court in respect of any entry in or omission from a Compensation Assessment Roll or in respect of any order passed under Chapters II to VI or concerning any matter which is or has already been the subject of any application made or proceedings taken under the said Chapters. There can, therefore, be no doubt that the scheme of the Act postulates that where the provisions of the Act apply, claims of creditors have to be submitted before the Claims Officer, the claimants have to follow the procedure prescribed by the Act and cannot avail of any remedy outside the Act by instituting a suit or any other proceedings in the court of ordinary civil jurisdiction.

It is in the light of this scheme of the Act that we must revert to section 4(b) and determine what its true scope and effect are. Mr. Jha contends that in construing the words of Section 4(d) it would be necessary to bear in mind the object of the Act which was merely to provide for the transference to the State of the interests of the proprietors and tenure-holders in land and of the mortgagees and lessees of such interests. It was not the object of the Act, says Mr. Jha, to extinguish debts due by the proprietors or tenure holders and so, it would be reasonable to confine the operation of s. 4(d) only to the claims made against the estates which have vested in the State and no others. In our opinion, this argument proceeds on an imperfect view of the aim and object of the Act. It is true that one of the objects of the Act was to provide for the transference to the State of the estates as specified. But as we have already seen, the provisions contained in section 16 in regard to the scaling down of the debts due by the proprietors and tenure-holders clearly indicate that another object which the Act wanted to achieve was to give some redress to the debtors whose estates have been taken away from them by the notifications issued under section 3. Therefore, in construing s. 4(d), it would not be right to assume that the interests of the debtors affected by the provisions of the Act do not fall within the protection of the Act. Mr. Jha fairly conceded that if the words used in s. 4(d) are literally construed and they are given their natural grammatical meaning, it would not be easy to limit the operation of s. 4(d) to execution proceedings where relief is claimed against the

properties which have vested in the State. The relevant clause in section 4(d) provides that all suits and proceedings for the recovery of any such money which may be pending on the date of the vesting shall be dropped; and these words are wide enough to include within their sweep execution proceedings, even though the recovery of the amount due may have been claimed by the decree-holder from properties other than those which have vested in the State. The only limitation imposed by the clause is that the execution proceedings should be for the recovery of any such money meaning any money due from the proprietor on the strength of a mortgage executed by him in respect of an estate. We have already emphasised that in the present case, the whole of the mortgaged property is an estate and, therefore, it is unnecessary for us to consider what would be the effect of the provisions of s. 4(d) in cases where part of the mortgaged property is an estate and part is not. It is also unnecessary to consider whether s. 4(d) would create a bar even in cases were the compensation amount payable to the mortgagor is insufficient to satisfy the mortgagee decree-holder's claim even to the extent of the amounts scaled down under section 16.

Mr. Jha, however, suggested that rules of grammar should not be allowed to have an overriding effect if it shown that putting a literal and grammatical construction on the relevant words would lead to unreasonable or anomalous results and in support of this argument, he has invited our attention to the observations made by Brett, M.R. in the case of the Lion Insurance Association Ltd. v. Tucker. ((1883) 12 Q.B.D. 176, 186.) "When you construe a statute or document" observed Brett, M.R., "you do not construe it, according to the mere ordinary general meaning of the words, but according to the ordinary meaning of the words as applied to the subject-matter with regard to which they are used, unless there is something what obliges you to read them in a sense which is not their ordinary sense in the English language as so applied. That, I take it, is the cardinal rule." We do not see how this principle can assist Mr. Jha in the present case. The scheme of the relevant provisions of the Act to which we have already referred unambiguously suggests that where the whole of the mortgaged property is an estate, certain consequences follow. The decree-holder has to make a claim; the claim has to be enquired into by the Claims Officer; the amount due to the decree-holder has to be determined by the Claims Officer and the amount so determined has to be paid to the decree-holder from out of the compensation money payable to the judgment-debtor. Having regard to the said scheme, it is difficult to confine the application of s. 4(d) only to execution proceedings in which the decree-holder seeks to proceed against the estate of the debtor. In fact, an execution proceeding to recover the decretal amount from the estate which has already vested in the State, would be incompetent because the said estate no longer belong to the judgment-debtor. That being so, we are satisfied that on the facts of this case, the High Court was right in holding that the application made by the appellants to execute the decree against the respondent by proceeding against her non-mortgaged properties is incompetent at the present stage. The amount due to the appellants under the decree in question has been already determined by the Claims Officer and the appellants must first seek to recover that amount as provided by the relevant provisions of the Act before they proceed to execute the personal decree.

This conclusion follows even on the terms of the decree itself. We have already seen that the direction issued by the trial Court is explicit and clear. The said direction which is consistent with the provisions of O. 34 R. 6 would enable the appellants to proceed personally against the respondent only if it is shown that the decretal amount is not fully satisfied from the proceeds of the mortgaged property. In the present case, the mortgaged property cannot be sold because it has vested in the State free of incumbrance; but in lieu of the mortgaged property, the respondent has become entitled to certain compensation amount and the appellants are given the statutory right to receive the amount due to them from the said compensation amount under section 24(5). This provision is some what similar to the provision of section 73(2) of the Transfer of Property Act

which provides, inter alia that where the mortgaged property is acquired under the Land Acquisition Act, or any other enactment for the time being in force providing for the compulsory acquisition of immovable property, the mortgagee shall be entitled to claim payment of the mortgage-money, in whole or in part, out of the amount due to the mortgagor as compensation. In a sense, the compensation amount payable to the respondent may prima facie be treated to be like a security substituted in the place of the original mortgaged property under section 73(2) of the Transfer of Property Act. However that may be, the terms of the decree require that the appellants must first seek their remedy from the said compensation amount before they can proceed against the non-mortgaged property of the respondent. The relevant directions in the decree do not justify the appellants' contention that because the mortgaged property has vested in the State, they are entitled to execute the personal decree without taking recourse to the remedy available to them under section 24(5) of the Act.

It now remains to refer to some decisions of the Patna High Court to which our attention was drawn during the hearing of this appeal. In Raghubir v. Basudevanand, ((1953) I.L.R. 32, 581.) the High Court has held that section 4(d) of the Act is not applicable to a case where money is secured by a mortgage or charge on estates, some of which are notified under section 3 of the Act and the others are not notified. In such a case, according to the High Court s. 4(d) will be a bar to the suit or execution proceedings so far as the vested estates are concerned, but the creditor will be entitled to prosecute the suit or execution proceedings as regards the estates or portions of estates which are not vested in the State. Since we are dealing with a case where the whole of the mortgaged property is an estate, it is unnecessary for us to consider whether the view taken by the Patna High Court in this case is correct or not.

In Mahanth Sukhdeo Das v. Kashi Prasad Tiwari (A.I.R. 1958, Pat. 630.) the full Bench of the High Court had occasion to consider whether a mortgagee decree-holder of the interest of the proprietor whose estate has vested in the State, is entitled to proceed against the Bakasht lands of the proprietor comprised in the said estate for recovery of the amount due to him under the mortgage decree, and it was held that in such a case, the mortgagee cannot be forced to seek his remedy under section 14 and to satisfy his mortgage debt out of the compensation payable under the Act, It appears that the Full Bench was inclined to take the view that the interest of the judgment-debtor in the bakasht land was one of the interests saved by section 6 and that, in consequence, the bakasht lands continued to remain in the possession of the ex-proprietor not in the character of bakasht lands but as raiyati lands; and since these lands were a part of the security offered by the mortgage-deed, the decree-holder was entitled to proceed against them without taking his remedy under section 14 of the Act. This conclusion was based on the view that the effect of s. 4(d) read with sections 3 and 6 of the Act was not to destroy the mortgage in its entirety but only with respect to that part of the estate which had vested absolutely in the State and no interest therein is left with the mortgagor proprietor or tenure-holder. It is conceded by Mr. Jha that this decision also proceeds on the assumption that the mortgage security consists of an estate which has vested in the State and of bakasht lands which did not, in substance, vest in the State but continued with the mortgagor as raiyati lands. Therefore, it is not necessary for us to examine the merits of the conclusion reached by the Full Bench in this Case. It may, however, be not out of place to add incidentally that Mr. Sarjoo Prasad for the respondent has suggested that the assumption made by the Full Bench about the character of the bakasht lands by virtue of the provisions of section 6 is inconsistent with the decisions of this Court in Rana Sheo Ambar Singh v. The Allahabad Bank Ltd. ((1962) 2 S.C.R. 441.). His argument is that the provisions of section 6 of the Act correspond to the provisions of section 18 of the U.P. Zamindari Abolition and Land Reforms Act (I of 1951), and that what this Court has said about the effect of the provisions of section 18, has shaken the validity of the conclusion of the Full Bench in regard to

the effect of section 6 of the Act. We do not think it necessary to consider this point as well in the present appeal. In any case, both the decisions on which Mr. Jha has relied afford no assistance to us in dealing with the point with which we are concerned in the present appeal.

The result is, the order passed by the High Court is confirmed and the appeal is dismissed with costs.

Appeal dismissed.

</html